EXHIBIT A

TRANSFER OF GTE-I TO INDEPENDENT PUBLIC CORPORATION

Bell Atlantic/GTE will eliminate the section 271 issue that would arise from Bell Atlantic's ownership of GTE Internetworking through the following structure:

DataCo Publicly Owned and Controlled; NewCo Holds Option

GTE Internetworking's existing nationwide data business will be established as a separate corporation ("DataCo") that will be publicly owned and controlled. Through an initial public offering, or "IPO," public shareholders will purchase shares of DataCo Class A common stock, which will initially carry 90% of the voting rights and the right to receive 90% of any dividends or other distributions. In exchange for the transfer of GTE-I, the merged Bell Atlantic/GTE ("NewCo") will receive shares of Class B stock of DataCo that will have 10 % of the voting rights and the right to receive 10% of any dividends or other distributions. NewCo will also have the option in the form of conversion rights to increase its ownership in the future once it receives sufficient interLATA relief to operate the business. The Class B shares will be convertible into shares that will represent 80% of the outstanding shares following conversion, assuming no additional shares are issued in the interim. That percentage will be reduced when DataCo issues additional shares.

The Bell Atlantic and GTE merger would close following the IPO.

Subject to normal corporate requirements and the investor safeguards described below, at any time after the IPO, DataCo will have the ability to issue additional Class A shares (for example, to fund acquisitions or major business initiatives), and it is expected that DataCo will do so. In the event that additional Class A shares are issued, the conversion of the Class B shares will give NewCo less than an 80% economic interest in DataCo. However, the shares into which the Class B shares are convertible will have enhanced voting provisions that are likely to preserve NewCo's voting control following conversion even if additional shares have been issued.

Until NewCo exercises its option, DataCo will be independent of NewCo. DataCo will have an independent board of directors that is periodically elected by the voting shareholders consistent with the requirements of applicable corporation laws. Initially, the board will have 10 members. One member will be the CEO of DataCo and eight of the remaining nine directors will be outside directors who will have no affiliation with Bell Atlantic or GTE. The tenth director will be elected by a class vote of the Class B shares and will not be eligible to serve as chairman. Exhibit B, appended hereto, describes how the board will be constituted, elected, and expanded. As described therein, following the IPO, during the next three annual elections, the board will be expanded to 13 members and a majority (at least 7) will be new members not selected prior to the IPO. (See Exhibit B.)

The board and officers of DataCo will owe fiduciary duties to the public shareholders. Incentive compensation for DataCo's managers will be tied to the performance of DataCo and the value of DataCo's publicly traded stock, not to the financial performance or stock value of NewCo. The initial source of financing for DataCo will be the proceeds from the sale of Class A stock in the IPO. Any additional funding required by DataCo during the interim would be raised from the public markets, possibly by issuing additional Class A shares, or by arm's-length commercial loans from NewCo.

NewCo's interests as a minority investor and holder of an option to acquire a controlling interest in the future will be protected by certain reasonable investor safeguards, described in Exhibit C appended hereto. These are both typical of the rights commonly held by option holders or other prospective acquirers and modeled on investor protections that have regularly been permitted by the Commission. These will include the right to approve certain fundamental business changes that adversely impact the value of NewCo's minority investment and conversion rights, including a change in control of DataCo or the sale of a significant portion of its assets. (See Exhibit C.)

The GTE-I business transferred to DataCo provides Internet backbone and related IP services and does not provide traditional switched long-distance voice service. DataCo's business plans do not contemplate acquisition of a traditional long-distance voice service provider. NewCo would not consent to DataCo's acquisition of a traditional long-distance voice service provider unless and until the Commission has reviewed and approved such acquisition.

Joint Marketing Where Permitted

The DataCo solution will fully preserve the integrity and competitiveness of GTE-I's existing business while also preserving NewCo's ability (contingent on interLATA relief) eventually to reacquire control of DataCo and bring to market the full range of long-term Internet and data benefits promised by the merger. In the meantime, this solution will enable customers to begin realizing immediately some of these important data benefits, since a significant portion of DataCo's business will be outside the Bell Atlantic region or in in-region states where Bell Atlantic has achieved 271 relief. Accordingly, during the period before the option is exercised, NewCo will market DataCo services (or the two companies will market their services jointly) as and where permitted by law. For example, in New York, where Bell Atlantic has already received 271 approval, NewCo and DataCo will jointly market DataCo's Internet connectivity services.

This arrangement is provided for in a "Purchase, Resale, and Marketing Agreement," submitted separately. Both GTE and Bell Atlantic are legally free to enter into this kind of commercial relationship today with a similarly situated company. The Agreement provides (among other things) that NewCo will not provide or jointly market any interLATA DataCo service in any state where NewCo does not have interLATA authority. The Agreement is non-exclusive; either company may purchase from or sell to others.

Transitional Support Services

All commercial interactions between NewCo and DataCo will be conducted pursuant to commercially reasonable contracts. (See "Transition Services Agreements," submitted separately.) This is consistent with the fact that DataCo and NewCo will each be independent public corporations whose directors and officers will owe duties of care and loyalty to their respective shareholders. These contracts will encompass the marketing arrangements discussed above as well as certain administrative support services that DataCo may require from NewCo.

These contracts are terminable by DataCo without penalty. They are typical of the commercially reasonable transitional arrangements that would be needed if DataCo were sold to a third party today.

Independent Auditor

NewCo will hire an independent auditor, acceptable to the Chief of the Common Carrier Bureau, to monitor NewCo's ongoing compliance with the terms of this Exhibit A.

Principles Governing Conversion

NewCo's conversion rights will be exercisable within five years from the closing of the merger. To exercise its conversion rights so as to own and control DataCo, NewCo must be able to operate DataCo in compliance with any section 271 restrictions. NewCo will thus have five years to eliminate those interLATA restrictions.

If, by the end of five years, NewCo has eliminated the restrictions on at least 95% of NewCo lines in Bell Atlantic states, NewCo may file a petition with the Commission requesting permanent or interim relief for the remaining lines, in which event NewCo will be permitted at least an additional year (which may be extended at the discretion of the Commission) in which to eliminate the remaining restrictions and exercise its conversion rights.

If NewCo has not eliminated all 271 restrictions applicable to DataCo's business, NewCo may exercise its conversion rights for the purpose of immediately bringing DataCo's business into compliance with section 271; provided, however, that (as set forth in the Purchase, Resale, and Marketing Agreement) DataCo will agree to modify, upon conversion, its operations in a particular state or states only if (a) those states involve no more than 3% of DataCo's revenue in the aggregate and (b) NewCo reimburses DataCo for its costs of coming into compliance with 271. NewCo will notify the Commission 90 days in advance if it requests DataCo to make such modifications and submit to the Commission a plan for bringing DataCo into compliance with section 271.

Subject to the rules below governing proceeds, NewCo will have the right at any time to dispose of all or part of its Class B shares, or to exercise its conversion rights as part of a transaction by which it immediately disposes of all or part of its interest in DataCo so that its post-conversion interest in DataCo does not exceed a 10% equity interest. To the extent Class B shares are purchased by someone who is not subject to section 271 restrictions, that purchaser would be free to convert those Class B shares immediately. If at the time NewCo's conversion period would otherwise expire, NewCo has a pending contract to sell its Class B shares to such a purchaser, the conversion period will be extended to allow for completion of the sale and the purchaser's immediate conversion.

Rules Governing Proceeds From Sale of Shares

If NewCo sells its shares in DataCo, the extent to which NewCo may retain the sales proceeds will depend upon the extent to which 271 restrictions on NewCo's operation of DataCo's business have been eliminated, as set forth in paragraphs A and B. These rules will be applied on a pro rata basis to a sale of less than all of NewCo's shares in DataCo.

A. Sale If 50% 271 Relief Threshold Not Met. If NewCo sells its shares before eliminating 271 restrictions on 50% of total NewCo lines in Bell Atlantic states,[1] NewCo will only be allowed to retain those proceeds equal to the amount it would have had if it had sold DataCo at the time of closing and reinvested the proceeds.

Specifically, NewCo would apply the following methodology:

(1) NewCo would determine its "net proceeds" by subtracting from its gross sales proceeds an amount equal to what NewCo would have received if, at the time of closing, it had invested its initial investment in the S&P 500 Index. (The initial value of NewCo's investment in DataCo will be based on the average trading price of Class A shares in the 30 days immediately following DataCo's IPO.)

(2) It would then pay to the general fund of the U.S. Treasury the after-tax amount of its net proceeds, or such lesser amount as the FCC in its discretion may determine.

B. Sale After 50% 271 Relief Threshold Has Been Met. If NewCo sells its shares after eliminating 271 restrictions on 50% or more of total NewCo lines in Bell Atlantic states, NewCo will keep the proceeds attributable to a 10% equity interest, but will forgo that portion of the

[1] For purposes of these Rules Governing Proceeds From Sales Of Shares, "total NewCo lines in Bell Atlantic states" shall equal Bell Atlantic lines plus GTE lines in Virginia and Pennsylvania, as shown in 1998 ARMIS reports; the number of lines in each Bell Atlantic state shall equal the number in the 1998 ARMIS reports, except that in the cases of Virginia and Pennsylvania, GTE lines in those States (as shown in 1998 ARMIS reports) shall be added to the Bell Atlantic lines; and "total NewCo lines" shall equal the sum of Bell Atlantic lines and GTE lines (including PRTC lines) shown in 1998 ARMIS reports.

remaining proceeds representing the gain attributable to those states in which 271 restrictions still apply.

Specifically, NewCo would apply the following methodology:

(1) NewCo would determine its "net proceeds" by: (a) subtracting from its gross sales proceeds an amount equal to 10% of the value of DataCo (calculated based on the sales price of the shares sold by NewCo); and (b) subtracting from this remainder an amount equal to what NewCo would have received if it had taken the amount of its initial investment above its 10% interest and invested it, at the time of closing, in the S&P 500 Index.

(2) NewCo would pay to the general fund of the U.S. Treasury the portion of its after-tax net proceeds proportionate to the number of NewCo lines in Bell Atlantic states still subject to applicable 271 restrictions (out of total NewCo lines), or such lesser amount as the FCC in its discretion may determine.

EXHIBIT B

DATACO BOARD

- Initially, the Board of Directors of DataCo will comprise 10 directors:
  - Three Class I directors whose term expires at the first Annual Meeting of Shareholders of DataCo;
  - Three Class II directors whose term will expire at the second Annual Meeting of Shareholders;
  - Three Class III directors whose term will expire at the third Annual Meeting of Shareholders; and
  - One director elected annually by the Class B shareholders.
- At the first Annual Meeting of DataCo, at least one of the incumbent Class I directors will not stand for election and the DataCo Board will nominate at least two new Class I directors. This will increase the number of directors to 11. The Class I directors will be elected to a three-year term.
- At the second Annual Meeting of DataCo, at least one of the incumbent Class II directors will not stand for election and the DataCo Board will nominate at least two new Class II directors. This will increase the number of directors to 12. The Class II directors will be elected to a three-year term.
- At the third Annual Meeting of DataCo, at least two of the incumbent Class III directors will not stand for election and the DataCo Board will nominate at least three new Class III directors. This will increase the number of directors to 13. The Class III directors will be elected to a three-year term.
- For each subsequent Annual Meeting, the Board of DataCo will determine the nominees for directors in the class of directors to be elected at the Annual Meeting.

As a result of the foregoing, at the end of the third year, a majority of the members of the board will be individuals who were not selected prior to the IPO.

EXHIBIT C

INVESTOR SAFEGUARDS

- If at the time NewCo converts its shares, it owns shares at least equal to 70% of DataCo, it shall have the right to purchase from DataCo, at market, a number of shares that will increase its ownership to 80%.

- Class A shares initially contain a provision that: (i) prevents any single holder or group (as defined under SEC rules) from voting more than ~~10~~15% of the Class A stock; and (ii) if any such person or group acquires over ~~10~~15% of the Class A stock, the votes represented by the shares in excess of ~~10~~15% shall be apportioned among the remaining Class A shareholders. This provision will expire upon conversion of a majority of the Class B shares.

- The Class B shareholders shall have the right to elect one member of the Board.

- Class vote of B shareholders required for:

  - Merger, consolidation, sale of all or substantially all assets or similar transactions;

  - Bankruptcy or liquidation;

  - Authorization of additional stock;

  - Amendments to Charter or certain By-law provisions that affect the rights of the Class B shareholders;

  - Issuance of shares, securities convertible into shares, or share equivalents;

  - A material change in the nature or scope of DataCo's business; and

  - Any action that would make it unlawful for NewCo to exercise its conversion right.

- Newco consent required for:

  - Agreements or arrangements that (i) bind or purport to bind NewCo or any of its affiliates or (ii) contain provisions that trigger ~~materially adversely affect DataCo's results of operation or financial condition, result in~~ a default, or ~~require~~ provide for a material payment as a result of ~~a termination or default upon or after~~ NewCo's exercise of its conversion right.

  ~~Arrangements with employees that would require payments or trigger other rights upon exercise of NewCo's conversion right.~~

  - Declaration of extraordinary dividends or other distributions.

  -Acquisitions or joint ventures involving cash, stock, stock equivalents or assets in excess of $100 million individually or $500 million in the aggregate in any 12-month period ~~or strategic alliances not subject to termination upon conversion.~~

  - Dispositions within the first two years and thereafter dispositions in excess of $50 million individually or $250 million in the aggregate in any 12-month period.

  - The incurrence, in any annual period, of indebtedness which exceeds the debt level for that period anticipated in the prospectus for the initial public offering of DataCo by the lesser of (i) 20% of such anticipated debt level and (ii) $500 million.

EXHIBIT D

EXECUTIVE SUMMARY OF COMMERCIAL CONTRACTS BETWEEN DATACO AND NEWCO

I. Transition Services Agreements

A. Agreement for Transition Services -- Administrative

- NewCo provides assistance with administrative services to DataCo to the extent DataCo continues to require them on a transitional basis.

- The agreement has a one year term, and DataCo may terminate the agreement for any reason upon 120 days notice.

- In connection with termination or expiration, NewCo is obligated to cooperate with DataCo to transition the work to another provider and to use commercially reasonable efforts to secure DataCo's continued use of any necessary third party licenses.

- The agreement covers the following services provided by NewCo to DataCo:

  -- *Accounting and Cash Processing Services* -- including accounts payable services (processing invoices and related services), payroll services (processing payroll deductions; check printing and distribution), cash processing services (cash reporting and processing functions; project finance consulting assistance), and asset accounting services (asset tracking and reporting).

  -- *Human Resource Services* -- including employee benefits services (assistance with vendor management and administrative functions), human resource administrative services (assistance with administration of educational assistance, training, relocation services and like programs and associated vendor management), health and welfare funding services (administrative support for Benefit Finance Information System, assistance with associated vendor management, accounting, and cost and funding guidance relating to benefit plans), and interfaces to benefit vendors (includes interface to payroll).

  -- *Real Estate Services* -- including real estate management and administration (project management for major real estate projects; real estate administration services), building services (call center and dispatch; building repairs and maintenance), environmental services (real estate transactions support; compliance services; environmental administration services; environmental project management), and

safety and security services (including security services provided by DataCo to NewCo).

- -- *Billing and Collection Services* -- including credit and collection services (credit verification and collection of past due balances), translation of DataCo billing records into format appropriate to bill rendering, printing, stuffing, and mailing, posting of billing events, and resolving customer inquiries. This portion of the agreement is renewable for two one-year terms. Termination requires 180 days notice to provide sufficient time to transition to a new supplier.

- Unless otherwise agreed by the parties, the ownership of any work product, including intellectual property, created during the provision of services under this agreement shall be determined in accordance with the terms and conditions of the Software Development and Technical Services Agreement described below. Similarly, any licenses relating to such work product will be granted on the same terms and conditions as used in the Software License Agreement described below.

B. Agreement for Information Technology Transition Services

- NewCo and DataCo provide and receive certain information technology services to the extent either party continues to require them on a transitional basis.

- The agreement has a one year term, and DataCo may terminate the agreement for any reason upon 120 days notice.

- In connection with termination or expiration, NewCo is obligated to cooperate with DataCo to transition the work to another provider and to use commercially reasonable efforts to secure DataCo's continued use of any necessary third party licenses.

- The agreement covers the following services:

  - -- *IT Computing Infrastructure* -- DataCo and NewCo will support certain elements of each other's hardware, including help desk support for PCs, systems support centers for critical servers, and LAN support. DataCo will provide WAN support to NewCo, and NewCo will provide DataCo with WAN support in areas outside of Bell Atlantic's territory.

  - -- *IT Continuing Operations Support* -- DataCo and NewCo will provide software support services to each other on a transitional basis

to ensure that certain elements of the companies' software continues to run effectively after the divestiture.

-- *Development and Enhancement* -- NewCo will provide DataCo with computer programming and technical services, including the development of software interfaces and modifications and enhancements to existing systems.

- Unless otherwise agreed by the parties, the ownership of any work product, including intellectual property, created during the provision of services under this agreement shall be determined in accordance with the terms and conditions of the Software Development and Technical Services Agreement described below. Similarly, any licenses relating to such work product will be granted on the same terms and conditions as used in the Software License Agreement described below.

II. Purchase, Resale, and Marketing Agreement

- Under this agreement, NewCo will purchase certain services from DataCo, including IP services (such as dedicated Internet access, remote access, security/managed firewall/virtual private network, and web hosting) and private line and asynchronous transfer mode transport services.

  - NewCo will be permitted to use the services internally or to resell the services on a stand-alone basis or as part of a bundled solution. Services resold by NewCo may be co-branded with DataCo or may be branded without the use of DataCo marks.

  - NewCo will not provide or jointly market any interLATA DataCo service in any state where NewCo does not have interLATA authority.

- NewCo will purchase at least $500 million of DataCo's services over a five year period, with $200 million of that amount to be purchased by the end of the third year of the contract. NewCo will pay DataCo the shortfall if NewCo does not meet its purchase commitment.

  - NewCo will receive most favored customer pricing and certain volume-based discounts.

  - The agreement is non-exclusive; either company may purchase from or sell to others.

- So that DataCo can provide services to NewCo while properly planning for increasing demands for its services by other parties, NewCo is required to provide DataCo with eighteen month forecasts of its requirements on a quarterly basis.

- NewCo will provide DataCo with 180 days prior written notice of the date on which it intends to exercise its option to convert its Class B common stock. This notice will indicate if there are any states in which NewCo does not expect to have legal authority under applicable federal law to operate DataCo at the time of the NewCo conversion.

  - Upon receipt of such notice, DataCo shall temporarily adjust its business in the NewCo-designated states in such a manner as DataCo determines, in its sole discretion, will allow DataCo to operate in compliance with applicable federal law in such states after NewCo converts its Class B shares.

  - In no event shall the NewCo designated states account for more than 3% of DataCo's total revenue over the preceding 12 months.

  - NewCo agrees to pay an amount necessary to make DataCo financially whole as a result of DataCo's modification of its business pursuant to this arrangement.

- DataCo will also provide to NewCo undersea cable capacity in the Americas Region Caribbean Ring System and commit to negotiate with NewCo with respect to obtaining capacity on the Americas III Cable Network currently under construction.

- The agreement will remain in effect for five years and is renewable for additional one-year periods by mutual consent of the parties.

III. Agreements Related to Intellectual Property

A. Software License Agreement

- Under this agreement NewCo will grant DataCo a non-exclusive, non-transferable license to use certain NewCo-owned software for DataCo's internal operations, and will also provide DataCo with related maintenance and support services. In addition, NewCo will provide DataCo with updates to the licensed software programs pursuant to the Agreement for Information Technology Transition Services.

- In exchange for the license, DataCo will pay NewCo an annual license fee for each licensed software program. The term of the license will be one year and will be automatically renewable for successive one year periods upon the payment of annual license fees.

- DataCo may terminate or cancel any software license upon thirty days written notice to NewCo.

B. Software Development and Technical Services Agreement

- NewCo will provide DataCo with software development and other technical services.

- Where services provided by NewCo relate exclusively to DataCo, the associated work product, including any newly-created software and accompanying documentation, and all related intellectual property rights will be transferred to DataCo. In return, DataCo will grant to NewCo a perpetual, royalty-free license to any such work product owned by DataCo for NewCo's internal use only.

- Where services provided by NewCo do not relate exclusively to DataCo, NewCo will retain ownership of any associated work product and will grant DataCo a non-exclusive, royalty-free, non-sublicenseable, nontransferable license to use any such work product for DataCo's internal use only.

- The agreement will have a term of one year and will be renewable for successive one-year terms by mutual consent of the parties. DataCo may terminate the agreement at any time upon written notice to NewCo.

C. Intellectual Property Ownership and Cross License Agreement

- This agreement will apportion the ownership rights of existing patents, patent applications, and certain other types of intellectual property between DataCo and NewCo.

  -- Existing patents and patent applications that relate to DataCo will be owned exclusively by DataCo. Existing patents and patent applications that relate to NewCo will be owned exclusively by NewCo. Both DataCo and NewCo will grant each other a perpetual, non-exclusive, royalty-free license to each other's existing patents and patent applications.

  -- Patents and patent applications that relate to both DataCo and NewCo, as well as non-statutory intellectual property, will be jointly owned by DataCo and NewCo.

IV. Real Estate Agreements

A. Facility Lease Agreements

- DataCo will enter into several agreements with NewCo for various leased and owned properties necessary to physically separate employees of DataCo and NewCo, including: (1) leases of portions of specified properties owned by DataCo or NewCo; (2) subleases of portions of specified properties leased by DataCo or NewCo; and (3) assignments of leases for specified properties.

- Each agreement provides that the parties will use reasonable efforts to obtain any landlord consents required for the proposed transfer.

- Certain portions of each agreement, including the lease/sublease term and the payment of rent term, will vary depending on the underlying lease at the specified property and the result of negotiations pertaining to specific issues at a specified property.

B. Real Estate Guarantee Agreements

- DataCo will also enter into several real estate guaranty agreements with NewCo. In particular, NewCo has agreed to continue to either issue new or continue existing guarantees in support of DataCo's real estate obligations.

- The guarantees will continue until six months following the date of DataCo's separation from NewCo or the date on which both Standard & Poor's and Moody's publish a credit rating for DataCo, whichever occurs first.

- In return for the guarantees, DataCo will pay NewCo a commercially reasonable fee.

V. Network Monitoring Agreement

- Under the terms of an existing agreement, DataCo receives from GTE Network Services, and will continue to receive from NewCo, monitoring services for its Global Network Infrastructure, including monitoring of network enabling devices and processes to detect anomalies occurring in the network.

- The agreement may be terminated by DataCo on 90 days notice.

- DataCo intends to complete construction of its own monitoring facility by September 2000. This agreement is intended to continue only until DataCo's facility is operational.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE CORPORATION,	)	
	)	
Transferor,	)	
	)	
and	)	CC Docket No. 98-184
	)	
BELL ATLANTIC CORPORATION,	)	
	)	
Transferee,	)	
	)	
For Consent to Transfer of Control	)	

SECOND SUPPLEMENTAL DECLARATION OF
PROFESSOR RONALD J. GILSON

1. As interesting and unusual as it is to debate one's colleague through dueling declarations, the vector of the analysis, as revealed in Professor Coffee's March 21, 2000 Supplemental Declaration ("Coffee Supplemental Declaration"), seems to be veering away from the matter before the Federal Communications Commission. It is interesting that the Securities and Exchange Commission once administered the dismantling of utility pyramids. For that matter, the SEC also once rendered advisory opinions on the feasibility of reorganization plans under the federal Bankruptcy Act. But the agency of interest is the FCC, and the statute of interest is section 271 and section 3(1) of the federal Communications Act. I offer this Second Supplemental Declaration in the hope of clearly framing the issues raised by the application of these sections to NewCo's holding of DataCo Class B common stock, and in doing so placing the federal securities laws in their proper context.

2. Section 3(1) renders a party an affiliate, and therefore triggers the requirement of FCC approval under section 271, if (i) it owns more than a 10 percent "equity interest" in another party, (ii) it owns an "equity equivalent" which, together with its equity interest exceeds 10 percent, or (iii) even if it does not own a greater than 10 percent combined equity interest and equity equivalent, it nonetheless "controls" the other party. In the remainder of this Second Supplemental Declaration, I will review each of these jurisdictional triggers to place the federal securities laws in their proper context.

I. Is an Option an "Equity Interest"?

3. As I set out in my initial Declaration, dated February 22, 2000 ("Initial Declaration"), a convertible stock like DataCo's Class B stock consists, as a matter of economic substance, of a stock interest and an option.[1] Because NewCo's Class B stock will represent only 10 percent of DataCo's voting and distribution rights, DataCo will be a NewCo affiliate based on ownership only if the conversion right under the Class B stock constitutes an additional "equity interest (or the equivalent)" under section 3(1), thereby increasing NewCo's interest in DataCo above section 3(1)'s 10 percent definitional safe harbor. I concluded in my Initial Declaration that an option does not constitute an equity interest or its equivalent under section 3(1) until it is exercised. An option conveys no participation rights – participation in voting, dividends or

[1] AT&T repeatedly treats the fact that, as a matter of economic substance, a convertible interest security is the functional equivalent of the security and an option as if it were merely hypothetical, referring to it in its March 22, 2000 *ex parte* letter to the FCC staff as "that unnatural conclusion" (p. 2) and as a "thought experiment" (p.10). Economics is concerned with substance not form. I do not imagine that AT&T would think the matter different if the two instruments were formally separate or if, because of non-regulatory considerations, the two instruments were formally combined. In either event, the issue is the same: is the option an additional equity interest or its equivalent?

liquidation – until the option is exercised and, in all events, NewCo's exercise of the option is independently subject to compliance with section 271(a), "thereby assuring that section 271(a)'s approval requirement is protected from transactional subterfuge." Declaration of John C. Coffee, Jr., March 10, 2000 ¶ 20 ("Coffee Initial Declaration").

4. At this point, AT&T and Professor Coffee invoked the federal securities laws to assert that an option was in all circumstances an "equity interest" under the federal Communications Act because an option was in all circumstances an "equity security" under the federal securities laws: "If this is the question – i.e., whether options constitute equity – the statutory answer is clear. The definition of 'equity security' in section 3(a)(11) of the Securities Exchange Act of 1934 defines 'equity security' to include: any security convertible ... into such a security." Coffee Initial Declaration ¶ 15. AT&T, in turn, offered three cases in support of Professor Coffee's analysis, one dealing with whether an option was a security for purposes of insider trading under section 16(b) of the Securities Exchange Act of 1934 ("Exchange Act");[2] one dealing with whether an option was a security for purposes of the application of Rule 10b-5's prohibition of fraud in connection with the sale of a security;[3] and one dealing with whether an option was a security for purposes of disclosure requirements under section 14(d) of the Exchange Act.[4] Under this analysis of section 3(1) and section 271(a), the FCC has no discretion

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[2] *Magma Power Company v. Dow Chemical Corporation*, 136 F.3d 316 (2nd Cir. 1998).

[3] *One-O-One Enterprises, Inc. v. Caruso*, 848 F.2d 1283 (D.C. Cir. 1988).

[4] *Securities and Exchange Commission v. Texas International Corporation*, 498 F. Supp. 1231 (N.D. Ill. 1980).

whatsoever: a 10 percent equity interest plus an option for even a single share of stock results in affiliation regardless of whether exercise of the option requires FCC approval and regardless of whether any other term of the transaction adequately protects the statutory interest.

5. In my Supplemental Declaration dated March 14, 2000, I explained that section 3(1) and section 271(a) of the federal Communications Act and the Exchange Act differ in their assessment of options because the federal Communications Act and the Exchange Act serve radically different functions. Section 3(1) is directed at efforts to circumvent section 271's approval requirement. For this purpose, an option adds nothing to a party's ownership. Because an option conveys no *current* ownership, it conveys no capacity to influence the conduct of another entity rendering in-region services, the activity for which the statute requires FCC approval. Because the *exercise* of an option does convey current ownership and therefore the ability to exercise the influence with which the statute is concerned, ownership under section 3(1) occurs when conversion of an option translates a *future* equity interest into a *current* equity interest.

6. Under the Exchange Act, in contrast, the fact that an option conveys only a *future* equity interest, not a *current* equity interest, makes no difference for the Exchange Act's purpose of requiring current disclosure or preventing insider trading.

7. In his Supplemental Declaration, dated March 21, 2000 ("Coffee Supplemental Declaration"), Professor Coffee responds heroically, trying to salvage his argument by drawing on the admittedly "largely dismantled" Public Utility Holding Company Act. Three points concerning Professor Coffee's response are of significance to my current effort to clearly frame the issues. First, Professor Coffee appears, appropriately, to have abandoned his and AT&T's

original claim that the federal securities laws strip the FCC of jurisdiction by dictating that an option is always an equity interest under sections 271 and 3(1) of the federal Communications Act. Rather, he now directs his attention to the control element under section 3(1): "The SEC's approach to the issue of control determination has been based on long practical experience in this field. It has found that "control" is a practical question...." Coffee Supplemental Declaration ¶12. To this extent, it appears Professor Coffee and I now agree. *An option is not an equity interest for purposes of section 3(1).* Whether the holder of an option in addition to a 10 percent equity interest is an affiliate depends on whether the option is an "equity equivalent" or whether the holder in all events "controls" the issuer of the option.

8. Second, I suppose a chance remains that Professor Coffee or AT&T may retreat to the more extreme position that an option is tautologically an equity interest and that the FCC has no discretion with respect to evaluating the control aspects of an option. Accordingly, I need also comment on my colleague's claim that the SEC's determination that an option was a security under section 16 was really "a finding about the meaning of 'control,' not the need for full disclosure," Coffee Supplemental Declaration ¶ 9, or a concern about insider trading.[5] Professor Coffee's extensive writings make clear that Rule 16 is about insider trading, not control. In our casebook, Professor Coffee's chapter on Corporate Disclosure and Securities Fraud quotes sections 16(a) and 16(b) under the heading "Section 16(b) and 'Short Swing' Profits." Jesse Choper, John C. Coffee, Jr. & Ronald J. Gilson, Cases and Materials on

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[5] I note that Professor Coffee does not dispute the point made in my Supplemental Declaration that decisions holding that an option is a security for purposes of section 10b-5 or section 14(d) of the Exchange Act have nothing to do with whether an option is an equity interest under section 271 and section 3(1) of the federal Communications Act.

Corporation 484 (4th ed. 1995). Similarly, in his casebook on Securities Regulation (8th ed. 1998, with J. Seligman), Professor Coffee introduces consideration of section 16 with the following sentence: "Section 16 was the original and only express 'insider' trading provisions in the 1934 Act." *Id.* at 1202. In the end, Congress was after insider trading in section 16. We need to keep our eye on the dog, not its tail.

9. Third, for this purpose little is learned from Professor Coffee's reference to the Public Utility Holding Company Act. Professor Coffee correctly quotes Professors Loss and Seligman that "[t]he provisions of the Holding Company Act with respect to the issuance of securities are not aimed at disclosure." Loss & Seligman, Securities Regulation 806. I take Professor Coffee's point now to be that although current securities law precedent – which are "aimed" at disclosure and insider trading[6] – concerning whether an option is an equity security is not relevant to section 271 and section 3(1), early *non-securities law* precedent is relevant to the determination of "control" under section 3(1). Even this point, however, stretches the authority on which he relies. Professors Loss and Seligman do state, as Professor Coffee quotes them, that "[m]ost of the early SEC control cases arose under the Public Utility Holding Company Act." Coffee Supplemental Declaration ¶3 (quoting Loss & Seligman, *supra*, at 1711). However, the authors stress later in the same paragraph that "in these early [SEC control] cases the accent was on 'controlling influence,' which the Commission and the courts said meant 'something less in the form of influence over the management or policies of a company than 'control' of a

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[6] Elsewhere Professor Loss has noted with respect to all statutes administered by the SEC that "the recurrent theme throughout [is] disclosure, again disclosure, and still more disclosure." Loss, Fundamentals of Securities Regulation 8 (2nd ed. 1988).

company." Loss & Seligman, *supra*, at 1711. Just as the Exchange Act was concerned about "equity *securities*," not "equity *interests*" as used in the federal Communications Act, so the early SEC cases to which Professors Loss and Seligman refer concerned "controlling *interest*," not "control" as used in the federal Communications Act.[7]

10. While Professor Coffee's more limited claim is more palatable in that it at least reserves to the FCC discretion to examine whether a control relation exists, it nonetheless remains troublesome for the same reasons as set out in my Supplemental Declaration: the Public Utility Holding Company Act and the federal Communications Act have radically different purposes. According to Professor Coffee, the purpose of the control inquiry under the Public Utility Holding Company Act was to determine whether a company was a holding company and therefore subject to the SEC's substantive regulation of its capital structure. Section 271 is not concerned with the soundness of a Bell operating company's capital structure, but with whether the BOC captures the benefits for which FCC approval is required. Thus, section 3(1)'s jurisdictional boundary relates to that inquiry. To be sure, the inquiry is factual, but the facts that are relevant depend on the purpose of the regulatory regime whose jurisdiction is at issue. Indeed, Professors Loss and Seligman begin the very chapter from which Professor Coffee quotes in his Supplemental Declaration by making precisely this point: "The context [of the concept of 'control' in the statutes administered by the SEC] – perhaps also the meaning of the

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[7] Professors Loss and Seligman also state that "many of the factors that determine the existence of a controlling influence apply equally to the determination whether there is control." Loss & Seligman at 1714. This is hardly surprising given that the object of inquiry is the operation of a business, but the determination of which factors apply in which context will depend on the particular statute and its purpose. *See* ¶ 10 *infra*.

concept – varies from statute to statute and sometimes within a particular statute." Loss & Seligman, *supra*, at 1691.

Is an Option an "Equity Equivalent"?

11. Having established that an option is not an "equity interest" under section 3(1), the next question is whether an option qualifies as an "equity equivalent." Such a determination, it should be noted, would have the same restrictive effect on FCC jurisdiction as a determination that an option was an equity interest. The Commission would have no discretion whatsoever: a 10 percent equity interest plus an option for even a single share of stock would result in affiliation regardless of whether exercise of the option would be independently subject to compliance with section 271 and regardless of whether any other term of the transaction adequately protects the statutory interest. As I discussed at some length in my Supplemental Declaration, an equity interest is one that conveys corporate participation rights: the right to participate in voting, dividend distributions, and liquidation distributions. An equity "equivalent" is a device that provides the same participation rights through a different mechanism. If corporate participation rights are obtained, it makes no difference that the vehicle is, for example, a contract rather than a more traditional capital structure instrument. Under this analysis, of course, an option is plainly not an equity equivalent for the same reasons it is not an equity interest: the holder acquires no corporate participation rights until the option is exercised.

12. Professor Coffee and AT&T struggle to avoid this straightforward structure by arguing that NewCo will share in the appreciation of DataCo stock through its option, even though it has no corporate participation rights. This approach ignores two critical distinctions. First, the value that concerns section 271 is not simple appreciation through a passive investment

– the kind that could be obtained by arm's length passive investments or derivative investments that are not subject to FCC approval. Rather, it is the value that can be obtained by achieving the competitive advantage – though economies of vertical integration and the application of Bell operating company expertise and assets – available from including a long distance component in a combined service offering. NewCo cannot acquire this appreciation from its option; the successful bundling of services requires at minimum contractual arrangements that – independent of any option – presumably would render a company an "affiliate" either through equity ownership or control. Thus, *equity equivalence* under section 3(1) requires something more than mere *value equivalence.* For NewCo to secure the value of concern under section 271, participation rights are a necessity that the proposed structure does not provide.

Does an Option confer "Control"?

13. Under an appropriate construction of section 3(1), receipt of an option is therefore not tautologically an equity interest or its equivalent. Rather, the FCC must inquire into whether the entire arrangement results in the exercise of control by one party over another. Here the FCC must confront the policy of the statute and the practicalities of transactional practice. In my Initial Declaration, I showed that the FCC quite clearly understands this reality, as demonstrated by how it treats the identical circumstance: the option held by the acquiring company in connection with a regulated acquisition during the post-execution/pre-FCC approval and closing period. After execution, the acquiring company holds an option to purchase the target company at the price set out in the acquisition agreement. During the period prior to FCC approval and closing, the acquiring company has the right to all appreciation in the value of the target company. Also during the post-execution/pre-approval and closing period, the acquiring

company typically has the benefit of a set of covenants restricting the target's behavior without acquiring-company consent, just as a set of covenants restrict DataCo's behavior during the pre-conversion period without NewCo's consent. Indeed, in Paragraph 25 of my Initial Declaration, I showed that the consent rights to be held by DataCo are descriptively and functionally identical to those currently held by AT&T with respect to AT&T's pending acquisition of MediaOne.

14. During the post-execution/pre-approval and closing period, AT&T and other acquirers hold the same option as does NewCo and pose the same control issues as does NewCo.[8] Moreover, the post-closing/pre-approval period is not necessarily a short time. I understand that FCC approval can take upwards of a year to secure, hardly a trivial period or one that is too short to raise concerns under section 3(1). For example, it is my understanding that the US West/Qwest merger was pending for several months until it was approved by the Commission pending divestiture, and even then the Commission ordered that the merger could not close until consummation of divestiture. *In the Matter of Qwest Communications International Inc., and US West, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Mar. 10, 2000. What is apparent is that the FCC has thoughtfully exercised its discretion and developed a practical approach to control under section 3(1) that allows the construction of transactional structures bridging the period pending

[8] Professor Coffee and AT&T have pointed out that the officers of DataCo might be influenced during the pre-conversion period by the anticipation that NewCo would be in charge after conversion. Of course, MediaOne officers are in precisely the same position during the post-execution/pre-approval and closing period.

Commission approval so long as they do not implicate the matters of concern under the relevant statutory structure. The DataCo/NewCo structure does not allow NewCo to get the benefit of service bundling without FCC approval. Thus, it should not be treated differently than functionally equivalent techniques like that of the AT&T/MediaOne transaction.[9]

Conclusion

15. Analogies to federal securities laws with dramatically different purposes hardly justify adopting a construction of section 3(1) and section 271 that strips the FCC of its jurisdiction to make a factual and policy determination of whether a particular pre-approval transaction structure adequately protects against an acquiring company garnering benefits whose attainment the statute conditions on Commission approval. In my opinion, there is no legal basis for concluding that NewCo's option confers either ownership or control over DataCo.

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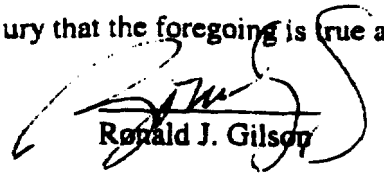
[9] In its March 10, 2000 *ex parte* letter to the FCC staff, AT&T asserted that its rights under the agreement governing its acquisition of MediaOne were different than NewCo's under the terms of its DataCo Class B stock. In particular, AT&T claimed that it could only decline to close the transaction if in the post-execution/pre-approval MediaOne breached its consent obligations, while NewCo could enforce its consent rights if DataCo were in breach. In my Supplemental Declaration I demonstrated that AT&T had misread its own agreement, and that AT&T and NewCo had essentially identical rights against their contracting parties in the event of breach. Since both AT&T and Professor Coffee were silent on this subject in their last round of submissions, I assume they have conceded the point.

I declare under penalty of perjury that the foregoing is true and correct.



Ronald J. Gilson

Executed on April 3, 2000